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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,636

12/19/2003

Ray Hebert

NAK-130B/US

9907

30869 7590 03/22/2007

LUMEN INTELLECTUAL PROPERTY SERVICES, INC.  
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PALO ALTO, CA 94306

EXAMINER

AKANBI, ISIAKA O

ART UNIT

PAPER NUMBER

2886

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/750,636

Applicant(s)

HEBERT ET AL.

Examiner

Isiaka O. Akanbi

Art Unit

2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Amendment*

The amendment file 12 December 2006 has been entered into this application. Claim 35 has been added.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of copending Application No. 10/741294. Although the conflicting claims are not identical, they are not patentably distinct from each other because the method claims in application 10/741294 also provide the means for apparatus (the means claims of 10/741294 provide the limitation of the 10750636). This is a

provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. The claims of the applications correspond to each other as follows:

10/750636	10/741294
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The difference between the present application and the copending application is that the present application claimed wherein said broadband beam illuminates said first planar mirror and said first parabolic mirror in said first component pair and said second planar mirror and said second parabolic mirror in said second component pair at angles substantially near normal

to said first planar mirror and said first parabolic mirror in said first component pair and said second planar mirror and said second parabolic mirror in said second component pair while the copending application claimed at least a first set of components defining a first light path, said components including at least a first component pair of a first planar mirror and a first parabolic mirror with a first focal length and a second component pair of a second planar mirror and a second parabolic mirror with a second focal length. The copending application claimed at least a first set of components defining a first light path, said components including at least a first component pair of a first planar mirror and a first parabolic mirror with a first focal length and a second component pair of a second planar mirror and a second parabolic mirror with a second focal length that would anticipate the claims of the present application. Both are Apparatus and Method for Optical Characterization of a Sample Over a Broadband of Wavelengths.

### ***Allowable Subject Matter***

Claims 1-35 would be allowable if the double patenting rejection as set forth in this Office action is overcome.

As to claim 1, the examiner agrees with the applicant arguments that the prior art of record, taken alone or in combination, fails to disclose or render obvious a means of mechanically displacing said second component pair without altering a position of said second parabolic mirror relative to said second planar mirror, whereby a focus position of said broadband beam can be altered without moving said first component pair, in combination with the rest of the limitations of the claim. Claims 2-25 and 35 are allowable by virtue of their dependency.

As to claim 26, the examiner agrees with the applicant arguments that the prior art of record, taken alone or in combination, fails to disclose or render obvious adjusting a focus position of said broadband beam by mechanically displacing said second component pair without altering a position of said second parabolic mirror relative to said second planar mirror, whereby the focus position can be altered without moving said first component pair, in combination with the rest of the limitations of the claim. Claims 27-34 are allowable by virtue of their dependency.

***Additional Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed in the attached form PTO-892 teach of other prior art method/apparatus for characterizing optical properties of a sample.

***Conclusion***

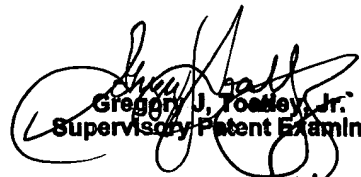
**Fax/Telephone Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isiaka Akanbi whose telephone number is (571) 272-8658. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley Jr. can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isiaka Akanbi  
March 8, 2007

  
Gregory J. Toatley, Jr.  
Supervisory Patent Examiner  
10/Mar/07